

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIO KOBAYASHI
and
HIROYUKI OHATA

Appeal 2006-2580
Application 09/766,275
Technology Center 1700

Decided: October 10, 2006

Before KIMLIN, GARRIS, and PAK, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-3, and 7. Claims 4 and 5 have been withdrawn from consideration as directed to a non-elected invention. Claim 1 is illustrative:

1. A stretchable composite sheet comprising:
an elastic sheet having a stretchability in at least one of two directions that are orthogonal to each other; and
a fibrous assembly in the form of a sheet having a stretchability in one of said at least two directions and joined to at least one surface of said elastic sheet, said fibrous assembly comprising a plurality of fibers and having an inelastic stretchability and being joined to said elastic sheet at binding spots to form a joined composite sheet structure which is thereafter stretched so as to change the dimensions of the fibers in the fibrous assembly and the elastic stretchability of the composite sheet, said binding spots being arranged intermittently along said two directions, said fibrous assembly comprising fibers that are curved between adjacent pairs of said binding spots along said one of said at least two directions, said fibers comprising ethylene/propylene copolymer containing ethylene at 0.5 – 10% by weight, ethylene/propylene/butene containing ethylene at 0.5 – 10% by weight and butene at 0.5 – 15% by weight, or a mixture thereof at 100 – 10% by weight.

The Examiner relies upon the following references as evidence of obviousness:

Morman	US 5,116,662	May 26, 1992
Strack	US 5,681,645	Oct. 28, 1997

Appellants' claimed invention is directed to a stretchable composite sheet comprising an elastic sheet and a fibrous, stretchable inelastic sheet. The inelastic fibrous sheet comprises either an ethylene/propylene copolymer or an ethylene/propylene/butene copolymer, or a mixture thereof,

Appeal 2006-2580
Application 09/766,275

wherein the ethylene content of the copolymer is in the range of 0.5 – 10% by weight.

Appealed claims 1-3, and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Strack in view of Morman.

We have thoroughly reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we find ourselves in agreement with Appellants that the Examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejection.

Strack, like Appellants, discloses the stretchable composite sheet comprising an elastic sheet and a fibrous, inelastic sheet. However, the reference fails to teach that the inelastic sheet fibers may comprise an ethylene copolymer, let alone the claimed ethylene copolymers. Indeed, Strack fails to teach that the inelastic fibers may be polyolefin polymers or copolymers, in general. Strack teaches that a well-suited type of material for the inelastic fabric is nylon tricot, and offers comparable examples of nylon tricot with polyester and polypropylene. Hence, Strack offers no teaching or suggestion that the claimed copolymers would be suitable for the inelastic fibers.

The Examiner relies upon Morman to supply the deficiency in the Strack. Morman does teach a composite of elastic and inelastic materials but teaches that the inelastic material should be neckable, wherein Strack specifically teaches against a neckable or gathered material (See, col. 6,

ll. 1-4). Accordingly, we agree with Appellants that one of ordinary skill in the art would not have been motivated to use the inelastic fibers of Morman for the non-gathered fibers of Strack. Moreover, Morman only teaches ethylene copolymers, propylene copolymers, and butylene copolymers, in general, but not the claimed ethylene/propylene and ethylene/propylene/-butene copolymers, let alone in the recited proportions.

While Strack teaches that "[t]hese knit webs, woven webs and scrim webs are known in the art: conventional webs, e.g., textile webs, such as a nonelastic textile web, can be used for the present invention" (col. 8, ll. 46-48), the Examiner has not established that materials other than the nylon tricot and polyester fabrics would have been suitable for the non-gatherable fibers of Strack, particularly the claimed ethylene copolymers.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejection.

REVERSED

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Appeal 2006-2580
Application 09/766,275

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